

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

APR 12 2021

U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

Michael ANTRANIMO LEE

Your full name

FEDERAL CIVIL RIGHTS
COMPLAINT
(BIVENS ACTION)

v.

Civil Action No.: 5:21 CV 54
(To be assigned by the Clerk of Court)

Lt. D. Bishoff,

Officer B. Gainer,

Captain Yeager,

Lt. Varber,

Enter above the full name of defendant(s) in this action

COMBINED (FTCA) ACTION

UNITED STATES OF AMERICA

For All Defendants in their
OFFICIAL CAPACITY.

I. JURISDICTION

This is a civil action brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 2201.

II. PARTIES

In Item A below, place your full name, inmate number, place of detention, and complete mailing address in the space provided.

A. Name of Plaintiff: Michael Lee Inmate No.: 19864-056
Address: USP Allenwood - P.O. Box 3000 -
White Deer, PA 17887

In Item B below, place the full name of each defendant, his or her official position, place of employment, and address in the space provided.

Attachment A

B. Name of Defendant: D. BISHOFFPosition: LieutenantPlace of Employment: FCI Gilmer, WVAddress: FCI Gilmer - P.O. Box 5000 -
Glenville, WV 26351Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ NoIf your answer is "YES," briefly explain: The incident happened at a Federal facility. He is a Federal officer. Lt. Bishoff is being sued in his official and individual capacity for violation of the 4th, 5th, and 8th Amendment. Also under 42 U.S.C. 1985(3). - continued on attachment -B.1 Name of Defendant: B. GAINERPosition: Corrections OfficerPlace of Employment: FCI Gilmer, WVAddress: FCI Gilmer - P.O. Box 5000 -
Glenville, WV 26351Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ NoIf your answer is "YES," briefly explain: The incident happened and he is employed at a Federal facility. Gainer is being sued in his individual (Bivens) capacity and his official capacity (FTCA). (4th, 5th, 8th Amendment) continued on attachmentB.2 Name of Defendant: Captain YeagerPosition: CaptainPlace of Employment: FCI Gilmer, WVAddress: FCI Gilmer - P.O. Box 5000 -
Glenville, WV 26351Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

Attachment A

If your answer is "YES," briefly explain: The incident happened at and he is employed at a Federal Facility. Mr. Yeager is being sued in his individual (BIVENS) capacity and his ~~not~~ official (FTCA) capacity. (5th, 8th Amendment)
- continued on attachment -

B.3 Name of Defendant: Lt. Varber
 Position: Lieutenant (Acting SIA at time)
 Place of Employment: FEI Gilmer
 Address: FEI Gilmer, WV - P.O. Box 5000 -
Glenville, WV 26351

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: The incident happened at and he is employed at a federal facility. Mr. Varber is being sued in his individual (BIVENS) capacity and his official (FTCA) capacity. (5th, 8th Amendment)
- continued on attachment -

(FTCA) only! Merrick Garland

B.4 Name of Defendant: UNITED STATES (U.S. Attorney General)
 Position: United States Attorney General
 Place of Employment: Dept. of Justice
 Address: 950 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20530

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☒ Yes ☐ No

If your answer is "YES," briefly explain: He is the U.S. Attorney General (Fed.) and will respond/be liable for all defendants in the official capacity.

Attachment Supporting Facts to Claim #1.

Lt. D. Bishoff:

is being Sued under BIVENS for Constitutional Violations under the 4th Amendment. For Falsification of official documents and Misrepresentation of official documents. Specifically, Incident Report # 3246747 and A Supporting Memorandum included therein. Lt. Bishoff Conspired with others listed to deny Lee Life, freedom, and liberty interest. 28 U.S.C. 1331

UNDER the 8th Amendment Lt. Bishoff Subjected Lee to CRUEL and UNUSUAL punishment by CHAINING Lee up like an animal under false pretenses. Lee endured pain and suffering for nearly 14 hours. IN a Very cold cell with no linen. A Form of torturing. As Lt. Bishoff, Captain Yeager and SIA/Lt. Harbar came back later and illegally tighten the restraints Without medical supervision. He knew of the risks Lee faced. He ~~knew~~ I would be subjected to pain and suffering. Subjecting Lee to deliberate indifference.

UNDER the 5th Amendment Lee was denied equal protection of Laws. The incident was racially motivated. The racial animus showed toward me. As Lt. Bishoff called me a "Monkey" three different times. Racism was the driving force behind the incident. Also the fact that I am a jail house lawyer with thousands of staff misconduct filings.

(FTCA) 28 U.S.C.S. ~~2676~~ 1346(b)(1) - ~~By~~ which the U.S. may be held liable for the torts of its employees, for violations of Lee's Fourth, Fifth, and Eighth Amendment (Parallel). IN his Official capacity. page 9(A)

Attachment Supporting Facts to Claim #2

Officer B. Gainer:

28 U.S.C. 1331

IS being Sued under Bivens for Constitutional Violations under the 4th Amendment: For Falsification of Official documents and Misrepresentation of official documents. Specifically, Incident Report #3246747. C/o Gainer conspired with others listed to deny Lee Life, freedom, and liberty interest. under 42 U.S.C. 1985(3).

UNDER the 8th Amendment: C/o B. Gainer conspired and subjected Lee to cruel and unusual punishment. First by intentionally Assaulting Lee. Then by falsifying (IR) # 3246747, therefore ~~causing~~ CAUSING /ASSISTING Lt. D. Bishoff to Authorize a Use of force Team to use force ON Lee. Causing Lee to be chained down for nearly (14) hours. C/o Gainer ~~was deliberate~~ subjected Lee to deliberate indifference. Because he knew the Incident Report would allow Lt. Bishoff to use force.

UNDER the 5th Amendment: Lee was denied equal protection of laws. The incident was racially motivated, AND in retaliation for staff misconduct filings.

IN HIS OFFICIAL CAPACITY C/o Gainer is being Sued under (ETCA) 28 U.S.C. 1346(b)(1) Parallel for Violations of Lee's Fourth, Fifth, and Eighth Amendment by which the United STATES is liable.

Attachment Supporting Facts to Claim #3

CAPTAIN Yeager

28 U.S.C. 1331

IS being sued under BIVENS for Constitutional Violations under the 5th Amendment: Equal protection of Laws. Racially motivated. Bystander liability and Supervisory liability. The incident transpired due to me being black, Filing complaints, and exercising my RIGHT to engage in a Hunger Strike. He conspired with the listed defendants to engage in racially motivated and discriminatory acts. Under 42 U.S.C. 1985(3). He witnessed Lt. Bishoff call Lee O "Monkey" three times. He gave orders.

UNDER THE 8th Amendment: Captain Yeager conspired with the defendants listed to subject Lee to cruel and usual punishment and deliberate indifference. As Lee was made to endure pain and suffering thru Racism and discrimination. LEE WAS being tortured. He ordered Lt's Bishoff and Barber to illegally tighten the restraints. While being a Bystander and Supervising.

In his official capacity c/o Gainer is being Sued under (FTCA) 28 U.S.C.S. 1346 (b)(1) Parallel For Violations of Lee's ~~5th~~, FIFTH, and Eighth Amendment claims. By which the United States is liable

Attachment Supporting Facts to claim #4

Lt. Yarber : 28 U.S.C. 1331

IS being sued under Bivens for Constitutional Violations under the 5th Amendment. He denied Lee equal protection of laws. AS the incident was the product of racism and discrimination. He witnessed Lt. Bishoff call Lee A "MONKEY" three times. He ordered Lee "to get on his knees." He was the Acting SUPERVISOR Investigative AGENT (SIA) who directly investigates STAFF Conduct. From minor to criminal! He conspired with the list of defendant's to deny Lee Life, Liberty, and freedom. Yet he was sworn in AS (SIA) to protect. Conspired under 42 U.S.C. 1985(3).

UNDER the 8th Amendment: Lt. Yarber subjected Lee to pain and suffering. He directly tighten Lee's restraints after they had already been applied to cause pain. without medical supervision there to check the reapplied restraints. Lt. Yarber participated directly and conspired with the listed defendant's. He knew Lee would be subjected to harm. He was deliberate indifference to Lee's Pain and suffering. Conspired under 42 U.S.C. 1985(3).

In his official capacity of Lt. Yarber IS being sued under (FTCA) 28 U.S.C. 1346(b)(1) Parallel for Violations of Lee's ~~F.F.T.H.~~ F.F.T.H. and 8th Amendment claims. By which the United States is liable.

Attachment A

B.5 Name of Defendant: _____
Position: _____
Place of Employment: _____
Address: _____

Was this Defendant acting under the authority or color of federal state law at the time these claims occurred? ☐ Yes ☐ No

If your answer is "YES," briefly explain: _____

III. PLACE OF PRESENT CONFINEMENT

Name of Prison/ Institution: USP ALLENWOOD, PA

- A. Is this where the events concerning your complaint took place?
☐ Yes ☒ No

If you answered "NO," where did the events occur?

FCI Gilmer, WV

- B. Is there a prisoner grievance procedure in the institution where the events occurred? ☒ Yes ☐ No
- C. Did you file a grievance concerning the facts relating to this complaint in the prisoner grievance procedure?
☒ Yes ☐ No

D. If your answer is "NO," explain why not: _____

- E. If your answer is "YES," identify the administrative grievance procedure number(s) in which the claims raised in this complaint were addressed

Attachment A

and state the result at level one, level two, and level three. ATTACH
GRIEVANCES AND RESPONSES:

LEVEL 1 976810-FI (Warden) ^{Result} under investigation
 LEVEL 2 976810-R1 (Reg. Director) under investigation
 LEVEL 3 976810-A1 (Dir. of the B.O.P.) under investigation
 (FTCA) claim # TRT-MXR-2020-05876

IV. PREVIOUS LAWSUITS AND ADMINISTRATIVE REMEDIES

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action? ☐ Yes ☒ No

B. If your answer is "YES", describe each lawsuit in the space below. If there is more than one lawsuit, describe additional lawsuits using the same format on a separate piece of paper which you should attach and label: "TV PREVIOUS LAWSUITS"

1. Parties to this previous lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court: _____
(If federal court, name the district; if state court, name the county)

3. Case Number: _____

4. Basic Claim Made/Issues Raised: _____

5. Name of Judge(s) to whom case was assigned: _____

6. Disposition: _____
(For example, was the case dismissed? Appealed? Pending?)

7. Approximate date of filing lawsuit: _____

Attachment A

8. Approximate date of disposition. Attach Copies: _____

- C. Did you seek informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part B?

☐ Yes ☐ No

- D. If your answer is "YES," briefly describe how relief was sought and the result. If your answer is "NO," explain why administrative relief was not sought.

- E. Did you exhaust available administrative remedies?

☐ Yes ☐ No

- F. If your answer is "YES," briefly explain the steps taken and attach proof of exhaustion. If your answer is "NO," briefly explain why administrative remedies were not exhausted.

- G. If you are requesting to proceed in this action *in forma pauperis* under 28 U.S.C. § 1915, list each civil action or appeal you filed in any court of the United States while you were incarcerated or detained in any facility that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Describe each civil action or appeal. If there is more than one civil action or appeal, describe the additional civil actions or appeals using the same format on a separate sheet of paper which you should attach and label "G. PREVIOUSLY DISMISSED ACTIONS OR APPEALS"

1. Parties to previous lawsuit:

V. STATEMENT OF CLAIM

BAISES FOR CLAIM -

ON April 16, 2019 I arrived at FCI Gilmer, Wv. Upon arrival Captain Yeager and Lt. Yarber (acting SIA) approached me. Capt. Yeager asked "me about the status of a pending Incident Report that is allegedly obtained in transit at FTC Oklahoma City." I explained "I never received any Incident Report (IR). So I can't tell you about it." Then the Capt. stated "Well we have to see if you going to SHU or not." I stated "Even if I did have an (IR) pending from FTC OK city. That would not place me in SHU (lock up). As the policy states FTC OK city was suppose to dispose of it prior to transferring me here. Plus any (IR) other than a "GREATEST SEVERITY" does not place me in SHU. I can legally go to Gen. population." Lt. Yarber stated "Oh we got a smart nigger." I was ultimately taken to SHU where I went on Hunger Strike. *ON the way to SHU the officers stated "the Capt. told us you like to file huh. That might cause you a lot of trouble here."

ON April 17, 2019 at approx. 7:50am c/o B. Gainer (who I never seen/spoke to before). Shows up at my cell and tells me "I have to go to medical. cuff up." While being escorted to medical for a hunger strike evaluation. C/o Gainer starts walking really fast and bending up on the cuffs. I say "whoa! What are you doing. Slow down. And why you keep bending up on the cuffs." CAUSING me instant pain. As that is my surgically repaired wrist (Right). He keeps pulling up on the cuffs. As we get to the medical room. I seen a short officer and the nurse. I tell the nurse "I refuse." AS c/o Gainer goes to put me the scale. Then intentionally pushes me against the wall. "The nurse says "O.K. he can refuse."

B(A)

Upon getting back to my cell. I ask to speak to the SIA, or Psychology. To make a complaint that I was assaulted. A little while later the short officer outside of medical who witnessed the whole episode, comes to my cell. He tells me "I'm the SHU Lt. and I'm not calling the SIA or Psychology. I've heard all about you."

I briefly covered the cell window to try to get staff to come and contact the SIA or Psychology. I thought better and removed the window cover. As noted in the DHO report for (IR) # 3246747 by Staff Rep. UNIT Manager R. Clem "Lee removed the cover on his own. Is seen talking with Lt. Bishoff and officer Frasure on the video footage in my cell and outside my cell." Also that C/O B. Gainer was not in position by my cell to give me an order or hear anything. "The reason the code 307 refusing to obey an order for covering the window was expunged. R. Clem also noted that "C/O B. Gainer never opened the food slot." In reference to his alleged order to submit to ~~had~~ hand restraints!

The next thing I know a use of force (5 man) team shows up. They use force and place me in ambulatory full restraints. Lead by Lt. Bishoff. The short officer who witnessed and was apart of everything. Around 10:00 am

At around 1:00pm thru 2:15pm Capt. Yeager, Lt.'s Yeager, and Bishoff open the door while I am still in ambulatory restraints and come inside. When I utilize my right to remain silent. They get mad and start using abusive and profane language. Captain Yeager says "Lt. Bishoff is talking to you." Lt. Bishoff says "Welcome to Gilmer!" We getting ready to have fun you stupid ass monkey." Over the next

Few minutes he calls me a "monkey" two more times. I finally tell him "WATCH YOUR MOUTH." Lt. Yerber says "WHAT YOU GONNA DO ~~XXXX~~ FILE SOME MORE COMPLAINTS. BLACKS DON'T DO WELL IN THESE MOUNTAINS." Then Captain Yenger THEN SAYS "Yerber those ~~rest~~ RESTRAINTS LOOK WAY TOO ~~loose~~ LOOSE." Lt. Yerber tells me "to get on my KNEE'S." Then Lt.'s Bishoff and Yerber take my restraints off and REAPPLY them tightly. CAUSING PAIN. The one loosened by medical and another LIEUTENANT. I am made to stay in Ambulatory for (24) hours. IN A cold cell with NO linen, boxers, T-shirt, socks ONLY. I was taken out of ambulatory around 12 midnight on 4/18/2019. I had cuts, abrasions, scratches, and bruises for a few weeks related to the ambulatory and use of force. At NO time did I refuse any order, threaten staff or pose a threat to staff.

A Few months later Lt. Bishoff told me in front of an I/M known as "Doe" from N.C. that "he WAS wrong for this incident. He would NEVER take a Sendings Institutions intel and react." He also told me "that he knew c/o Gainer was Aggressive. But when he saw my record. He told Gainer don't lose control of that INMATE (I/M). He gave c/o Gainer the order to do what he did." Lt. Bishoff did Apologize. The later incident happened a few days after the incident.

Attachment A

Plaintiff(s): Michael Lee (me)Defendant(s): LARRY PFISTER, et al., USA

2. Name and location of court and case number:

U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA
CASE # EDCV12-00794-AG(DTB)

3. Grounds for dismissal:
- ☐
- frivolous
- ☐
- malicious
- Successful Settlement
-
- ☐
- failure to state a claim upon which relief may be granted

4. Approximate date of filing lawsuit: _____

5. Approximate date of disposition: _____

V. STATEMENT OF CLAIM

State here, as **BRIEFLY** as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. You must include allegations of specific wrongful conduct as to **EACH** and **EVERY** defendant in the complaint. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, you must number and set forth each claim in a separate paragraph. **UNRELATED CLAIMS MUST BE RAISED IN SEPARATE COMPLAINTS WITH ADDITIONAL FILING FEES. NO MORE THAN FIVE (5) TYPED OR TEN (10) NEATLY PRINTED PAGES MAY BE ATTACHED TO THIS COMPLAINT. (LR PL 3.4.4)**

CLAIM 1: Lt. D. Bischoff violating the Plaintiff's Fourth Amend-
ment rights, 8th Amendment, and 5th Amendment rights.
Also conspired with listed defendant's to violate plaintiff's
rights under 42 U.S.C. 1985(3). He is being sued in
his individual capacity (Bivens) and official capacity (FTCA)
28 U.S.C. 1346(b)(1).

Supporting Facts: see Attachment

Attachment A

CLAIM 2: OFFICER B. EAKER Violated the plaintiff's Fourth, Eighth and Fifth Amendment rights. Conspired with the listed defendant's under 42 U.S.C. 1985(3) to violate plaintiff's Const. Rights. Is being sued in his individual capacity (Bivens) and official capacity (FTCA) 28 U.S.C.S. 1346 (b)(1).

Supporting Facts: — See Attachment —

CLAIM 3: Captain Yeager Violated the plaintiff's 5th and 8th Amendment rights. Conspired with the listed defendant's under 42 U.S.C. 1985(3) to violate plaintiff's Const. rights. Is being sued in his individual capacity (Bivens) and official capacity (FTCA) 28 U.S.C.S. 1346 (b)(1).

Supporting Facts: — See Attachment —

CLAIM 4: Lt. Barber violated the plaintiff's 5th and 8th Amendment rights. Conspired with the listed defendant's under 42 U.S.C. 1985(3) to violate plaintiff's Const. rights. Is being sued in his individual capacity (Bivens) and official capacity (FTCA) 28 U.S.C.S. 1346 (b)(1).

Supporting Facts: — See Attachment —

Attachment A

— U.S. Attorney General —

CLAIM 5: The UNITED STATES is liable for the torts of its employee's while acting within the scope of office or employment. (Negligence or Wrongful Acts). (FTCA) - OFFICIAL capacity -

Supporting Facts: All the listed defendant's were federal officers, acting within the scope of their employment who committed wrongful, negligent, and intentional Acts. - See complaint and supporting documents -

VI. INJURY

Describe **BRIEFLY** and **SPECIFICALLY** how you have been injured and the exact nature of your damages.

~~Plaintiff respectfully asks for damages in (FTCA) action for sum of \$1,000,000.00 (one million U.S. currency) and under Bivens for redress~~
I was subjected to physical pain and suffering. I was subjected to emotional and Psychological distress by the U.S. I was in pain for weeks, with scratches, cuts, abrasions, and bruises.

VII. RELIEF

State **BRIEFLY** and **EXACTLY** what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

Plaintiff respectfully asks for damages in (FTCA) action for sum of \$1,000,000.00 (one million U.S. currency) and under Bivens for redress under Const. Violations of civil Rights that each defendant pay \$250,000.00 and punitive damages of \$500,000.00 each defendant for a \$3,000,000.00 (3 million total).

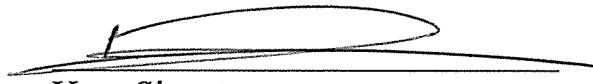
* Jury Trial Requested on all Actions!

Attachment A

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained in the complaint is true and accurate. Title 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at USP Allenwood on April 7, 2021.
(Location) (Date)


Your Signature